

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JESSICA BENTON, SHELBY BRYANT,
ANNE MARIE CAVANAUGH, ALYSSA
GARRISON, AND CLARE THOMAS,

Plaintiffs,

v.

CITY OF SEATTLE,

Defendant.

Case No. 2:20-cv-01174-RAJ

ORDER

I. INTRODUCTION

This matter comes before the Court on Plaintiffs’ Motion for Preliminary Injunction (Dkt. # 31) and Motion to Amend Complaint (Dkt. # 42). Having considered the submissions of the parties, the relevant portions of the record, and the applicable law, the Court finds that oral argument is unnecessary. For the reasons below, the motion for preliminary injunction is **DENIED**, and the motion to amend complaint is **GRANTED**.

II. BACKGROUND

This case is all but identical to a separate earlier-filed case pending before this Court. Dkt. # 25 at 1-4. In the summer of last year—nearly two months before this action was filed—several plaintiffs sued the City of Seattle (“City”) in *Black Lives Matter Seattle-King County v. City of Seattle*, No. 2:20-cv-00887-RAJ (W.D. Wash. filed June 9, 2020) (“*Black Lives Matter*” or “*BLM*”). *Id.*

1 **A. *Black Lives Matter Case***

2 *BLM* plaintiffs¹ allege that, following the death of George Floyd in Minneapolis,
3 protests in Seattle ensued and the Seattle Police Department (“SPD”) exercised
4 unconstitutional force to suppress protesters. Dkt. # 25 at 2. The plaintiffs assert claims
5 for violations of their First and Fourth Amendment rights. *Id.*

6 The story of *BLM* is one of injunction and enforcement. After they filed their
7 complaint, the *BLM* plaintiffs moved for a temporary restraining order (“TRO”). Dkt.
8 # 25 at 2. The Court granted the motion and entered a TRO. *Id.* The parties later
9 stipulated to a preliminary injunction, which the Court also granted. *Id.*

10 Over a month later, on July 27, 2020, the plaintiffs moved for an order to show
11 cause why the City should not be held in contempt for violating the preliminary
12 injunction. *Id.* at 3. The contempt motion was based on events that happened on July 25,
13 2020, just two days earlier, when SPD allegedly deployed crowd control weapons on
14 protestors. *Id.* Weeks after the plaintiffs moved for an order to show cause, the parties
15 entered a stipulation, which the Court granted. *Id.* Among other things, the stipulation
16 clarified the parties’ initial, stipulated injunction. *Id.*

17 On September 30, 2020, *BLM* plaintiffs filed their second contempt motion. *Black*
18 *Lives Matter*, No. 2:20-cv-00887-RAJ (Dkt. # 114). The motion identified four dates of
19 protests: August 26, September 7, September 22, and September 23. *Id.* *BLM* plaintiffs
20 alleged that, on those days, SPD used crowd control weapons in a way that violated the
21 preliminary injunction orders. *Id.* Like their first contempt motion for the July 25, 2020
22 protest, the plaintiffs asked the Court to hold the City in contempt. *Id.*

23 The record that followed was enormous: The City filed a response. *Id.* (Dkt.
24 # 135). The Court conducted a status hearing. *Id.* (Dkt. # 140). The parties submitted a
25 joint report regarding the briefing schedule and evidentiary scope of the contempt

26
27 ¹ For clarity, the Court refers to the *BLM* plaintiffs as “*BLM* plaintiffs” or “the plaintiffs.”
28 The Court refers to the named plaintiffs in this action simply as “Plaintiffs.”

1 motion. *Id.* (Dkt. # 141). The Court held another status hearing and entered a briefing
2 schedule. *Id.* (Dkt. ## 142-43). Per the briefing schedule, the City filed a second
3 response. *Id.* (Dkt. # 144). *BLM* plaintiffs filed a reply. *Id.* (Dkt. # 152). On September
4 18, 2020, the Court heard oral argument on the motion. *Id.* (Dkt. # 160). Just over two
5 weeks later, the Court entered a 27-page order granting the motion in part, denying it in
6 part, and holding the City in contempt. *Id.* (Dkt. # 161). The parties then argued over
7 attorneys' fees and what the appropriate contempt sanction should be. *Id.* (Dkt. ## 164,
8 166, 171, 176). And the City moved for reconsideration. *Id.* (Dkt. # 178).

9 The contempt matter concluded nearly three months after it began, with a 20-page
10 order and an award of civil compensatory sanctions in the form of attorneys' fees. *Id.*
11 (Dkt. # 189). All told, *BLM* plaintiffs filed nearly 30 declarations. *Id.* (Dkt. ## 115-34,
12 153, 167-70, 177, 187). Likewise, the City filed their own declarations, along with scores
13 of officer statements and hours of body worn video camera footage. *Id.* (Dkt. ## 136-39,
14 145-51, 172-75, 179-85).

15 **B. This Case**

16 This case began right after *BLM* plaintiffs' first contempt motion. On August 3,
17 2020, Plaintiffs here sued the City and moved for a TRO in their own right. Dkt. ## 1, 4.

18 Like the *BLM* plaintiffs, Plaintiffs claimed that "Washingtonians are trying to
19 exercise their right to protest in the streets of Seattle to demand an end to police
20 brutality," yet they are thwarted because SPD "indiscriminately shoot[s] toxic substances
21 in the air, deploy[s] projectiles at departing protesters, and toss[es] blast balls into close
22 areas of protesters marching." Dkt. # 1 at 2. Like the *BLM* plaintiffs' first contempt
23 motion, Plaintiffs' action and motion for TRO were filed in response to the July 25, 2020
24 protest. Dkt. # 25 at 3-4.

25 At least as initially advertised, this case was different from *BLM* in two respects.
26 First, unlike the *BLM* plaintiffs who only brought First and Fourth Amendment claims,
27 Plaintiffs asserted the same claims plus a third claim for the violation of the Equal

1 Protection Clause. Dkt. # 25 at 3-4. They alleged that because prospective protesters
 2 needed to clad themselves in “cost-prohibitive gear to withstand munitions,” they were
 3 subject to a “de facto protest tax.” *Id.* (quoting Dkt. # 1 at 4). Second, Plaintiffs sought a
 4 blanket, not tailored, prohibition on the same crowd control weapons enjoined in *BLM*.
 5 *Id.*

6 Given that an injunction in *BLM* was already in place, the Court found that
 7 Plaintiffs failed to show that the balance of equities tipped in their favor or that their
 8 requested TRO would be in the public’s interest. *Id.* at 6-7. The Court thus denied
 9 Plaintiffs the separate, additional, and blanket injunctive relief they sought. *Id.*

10 **i. Motion for Preliminary Injunction and Motion to Amend**

11 Like the *BLM* plaintiffs, Plaintiffs here were spurred into action by the August 26,
 12 September 7, September 22, and September 23 protests. Whereas the *BLM* plaintiffs
 13 filed a second contempt motion, Plaintiffs here moved for a preliminary injunction. Dkt.
 14 # 31. Plaintiffs’ motion for preliminary injunction challenges the same four protests and
 15 one more. *Id.* at 7-8. On September 26, 2020, a protestor claims to have been hit in the
 16 head with a flash-bang grenade. Dkt. # 41.

17 Besides its own declarations, Plaintiffs draw heavily on the record in *BLM* to
 18 support their motion for a preliminary injunction. Dkt. # 31. Plaintiffs cite no less than
 19 15 declarations filed in *BLM*. *Id.* Those declarations were attached to the *BLM*
 20 plaintiffs’ first contempt motion for the July 25, 2020 protest. *Id.* For their part,
 21 Plaintiffs attach 10 declarations of their own for the August 26, September 7, September
 22 22, September 23, and September 26 protests. Dkt. ## 32-41. Of the 10 declarants, half
 23 did not attend the protests in question. Dkt. ## 32-36. The other declarants attach video
 24 footage of the protests that was also before the Court in *BLM*’s second contempt motion.
 25 *Compare* Dkt. ## 38, 39 with *BLM* (Dkt. ## 119, 120).

26 The day Plaintiffs moved for a preliminary injunction they also moved to amend
 27 their complaint. Dkt. # 42. Supposedly, they seek to add “recent factual allegations” that

1 have arisen since filing the original complaint. *Id.* They also seek to drop their Equal
 2 Protection Clause claim, though they did not inform the Court of this proposed change.
 3 *See* Dkt. ## 42, 42-1; *see infra* Section III.A.

4 **III. DISCUSSION**

5 Now before the Court are Plaintiffs’ motion to amend their complaint and motion
 6 for a preliminary injunction. The Court addresses each in turn.

7 **A. Motion to Amend Complaint (# 42)**

8 Under Federal Rule of Civil Procedure 15, a party may amend its pleading with
 9 the opposing party’s written consent or the court’s leave. Fed. R. Civ. P. 15(a)(1)(2).
 10 Leave to amend should be freely given when justice so requires. *Id.*

11 Plaintiffs move to amend their complaint. Dkt. # 42. Though they did not obtain
 12 the City’s consent before filing their motion, the City has since responded and stated that
 13 it does not oppose. Dkt. # 44. Given the lack of opposition, the Court grants Plaintiffs
 14 leave to file their proposed amended complaint, located at Docket No. 42-1.

15 Under Local Civil Rule 15, a party requesting leave to amend “must indicate on
 16 the proposed amended pleading how it differs from the pleading that it amends by
 17 bracketing or striking through the text to be deleted and underlining or highlighting the
 18 text to be added.” Local Rules W.D. Wash. LCR 15. Plaintiffs have not complied with
 19 this rule. Their proposed amended complaint fails to identify how it differs from the
 20 initial complaint. *See* Dkt. # 42-1. Reviewing both the initial and proposed complaint,
 21 along with Plaintiffs’ description of their amendments, the Court surmises that they have
 22 dropped Plaintiff Clare Thomas and have added new factual allegations. *Compare* Dkt.
 23 # 1 *with* Dkt. # 42-1; *see also* Dkt. # 42. Curiously, it also appears—though Plaintiffs
 24 omit this from their motion—that they have also dropped their Equal Protection claim.
 25 Dkt. # 48 at 3-4, 21.

26 **Within 7 days of this Order**, Plaintiffs must file both their proposed amended
 27 complaint (Dkt. # 42-1) and, in accordance with Local Civil Rule 15, a document

identifying how the initial and amended complaint differ.

B. Motion for Preliminary Injunction (Dkt. # 31)

i. Legal Standard

To issue a preliminary injunction, a court must determine whether a plaintiff (1) is likely to succeed on the merits of their claim; (2) is likely to suffer irreparable harm in the absence of preliminary relief; (3) has shown that the balance of equities tips in the plaintiff's favor, and (4) has shown that an injunction is in the public interest. *Short v. Brown*, 893 F.3d 671, 675 (9th Cir. 2018) (citing *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). In the alternative, “if a plaintiff can only show that there are serious questions going to the merits—a lesser showing than likelihood of success on the merits—then a preliminary injunction may still issue if the balance of hardships tips sharply in the plaintiff's favor, and the other two *Winter* factors are satisfied.” *Feldman v. Ariz. Sec. of State's Office*, 843 F.3d 366, 375 (9th Cir. 2016) (internal quotation marks omitted) (emphasis in original) (quoting *Shell Offshore, Inc. v. Greenpeace, Inc.*, 709 F.3d 1281, 1291 (9th Cir. 2013)).

ii. Winter Factors

Assuming without deciding that the first two *Winter* factors are met, the Court addresses the final two factors, balance of the equities and the public interest. As is the case here, “[w]hen the government is a party, these last two factors merge.” *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014) (quoting *Nken v. Holder*, 556 U.S. 418, 435 (2009)).

Despite the tailored—and now enforced—preliminary injunction orders in *BLM*, Plaintiffs seek a preliminary injunction enjoining the City from even *possessing* crowd control weapons. Dkt. # 31-1 ¶ 1. The Court denies Plaintiffs' request: they have failed to show that the balance of the equities and the public interest favor the additional injunctive relief they seek.

The last two *Winter* factors tip sharply in the City's favor for two reasons. First,

1 given the orders in *BLM*, Plaintiffs are already afforded substantial protection. Through
2 *BLM*, the City is already subject to two injunction orders, the initial preliminary
3 injunction and the clarification order following *BLM* plaintiffs' first contempt motion.
4 *Black Lives Matter*, No. 2:20-cv-00887-RAJ (Dkt. ## 42, 110). Both orders are a result
5 of the Court's balancing the equities and calibrating the need for constitutional protection
6 and public safety. Dkt. # 25 at 6-7. Further, the Court has also entered two contempt
7 orders, enforcing the preliminary injunction, holding the City to account, and clarifying
8 what uses of crowd control weapons violate the injunction. *Black Lives Matter*, No.
9 2:20-cv-00887-RAJ (Dkt. ## 161, 189). As potential protestors, Plaintiffs already benefit
10 from those rulings. Plaintiffs fail to justify why they deserve *additional* injunctive relief.
11 That is, they fail to explain why their circumstances (which are the same as *BLM*) require
12 the Court to take an existing and enforced preliminary injunction, abandon it, and
13 supplant it with their proposed blanket prohibition.

14 Plaintiffs' request for additional injunctive relief is even less persuasive now that
15 this action and *BLM* are, in effect, identical. Initially, Plaintiffs claimed to be making an
16 argument that the *BLM* plaintiffs were not. Dkt. # 1. According to their initial complaint,
17 besides the First and Fourth Amendment, Plaintiffs were also suing the City on Equal
18 Protection grounds. *Id.* The SPD's policy of using crowd control weapons on protestors,
19 Plaintiffs alleged, amounted to an Equal Protection violation because it was a "de facto
20 protest tax." Dkt. # 1 at 4, 17-18. They alleged that "individual protestors subjected to
21 SPD's unabated and indiscriminate violence now must purchase cost-prohibitive gear to
22 withstand munitions—even when peacefully protesting—as a condition to exercising
23 their right to free speech and peaceable assembly." *Id.* at 4. Plaintiffs have since
24 dropped that claim. As the City observes, their allegations now mirror those in *BLM*.
25 Dkt. # 48 at 21.

26 In short, Plaintiffs are already protected by the *BLM* injunction and contempt
27 orders. They are seeking additional injunctive relief on the same (if not, less developed)

1 facts and theories as the *BLM* plaintiffs. Yet Plaintiffs have not explained why they are
 2 entitled to additional relief when this Court has already crafted and enforced the
 3 preliminary injunction in *BLM*.

4 Second, judicial economy, docket management, and the avoidance of inconsistent
 5 rulings tip sharply in the City’s favor. As explained above, Plaintiffs’ instant motion for
 6 preliminary injunction is predicated on the same four protests that were the subject of
 7 *BLM* plaintiffs’ second contempt motion. *See supra* Section II.A.² After nearly three
 8 months, the Court resolved that motion. *Id.* To do so, the Court reviewed dozens of
 9 declarations, hours of video, and hundreds of pages of documents. *Id.* The Court
 10 conducted several status conferences and heard oral argument. *Id.* In the end, the Court
 11 issued two lengthy orders enforcing the injunction and imposing sanctions. *Id.*
 12 Addressing the same four protests—those that occurred on August 26, September 7,
 13 September 22, and September 23³—in this action would duplicate those efforts. Perhaps
 14 more importantly, it would invite the Court to render inconsistent rulings. In *BLM*, the
 15 Court already made several factual findings on a more robust record than the one here.
 16 Examining those protests anew would only invite error.

17 Plaintiffs argue that the last two *Winter* prongs “always favor ‘prevent[ing] the
 18 violation of a party’s constitutional rights.’” Dkt. # 31 at 12-15 (quoting *Melendres v.*
 19 *Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)). They also argue that protestors must
 20 “cobbl[e] together resources” to protest “by way of a crowdsourced fundrais[ing] for
 21 _____

22 ² The Court takes judicial notice of the *BLM* docket *sua sponte*. Fed. R. Evid. 201(c)(1);
 23 *United States v. Raygoza-Garcia*, 902 F.3d 994, 1001 (9th Cir. 2018) (“A court may take
 24 judicial notice of undisputed matters of public record, which may include court records
 available through PACER.”).

25 ³ The only protest addressed here that was not covered in *BLM* is the September 26
 26 protest. Dkt. # 41. For that protest, Plaintiffs rely on a single declaration from a
 27 protestor who claims to be hit in the head by a flash-bang grenade. *Id.* The declaration
 28 cites just one use of crowd control weapons and provides no context. *Id.* It is insufficient
 to justify the extraordinary relief Plaintiffs seek.

protective gear.” *Id.* at 13. The first argument fails because, as explained above, the current preliminary injunction and contempt orders already safeguards their rights. The second argument fails because the speculative need for protective gear for some protestors is greatly outweighed by the real costs of duplicative and inconsistent litigation, especially given that Plaintiffs have abandoned their “de facto protest tax” claim.

“A preliminary injunction is an extraordinary remedy never awarded as of right.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). “[*Winter*] requires the plaintiff to make a showing on all four prongs.” *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011). Proponents of a preliminary injunction bear the “heavy burden” of making a “clear showing” that they are entitled to such relief. *Ctr. for Competitive Pol. v. Harris*, 784 F.3d 1307, 1312 (9th Cir. 2015), *abrogated on other grounds by Americans for Prosperity Found. v. Bonta*, 141 S. Ct. 2373 (2021).

Plaintiffs fail to meet their burden. The last two *Winter* prongs tip sharply in the City’s favor. Therefore, Plaintiffs do not make a “clear showing” that they are entitled to more injunctive relief than currently exists. Thus, the Court denies their motion for a preliminary injunction.

IV. CONCLUSION

For the reasons stated above, the Court **DENIES** Plaintiffs’ Motion for Preliminary Injunction (Dkt. # 31) and **GRANTS** Plaintiffs’ Motion to Amend Complaint (Dkt. # 42).

DATED this 1st day of September, 2021.



The Honorable Richard A. Jones
United States District Judge